

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

LINDA BOLLINGER
Plaintiff Below,
Appellee

VS

GARY DYE
ARIEL PROTACK
Defendant Below,
Appellant

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§ C.A. No. JP17-18-007713
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TRIAL DE NOVO

Submitted: March 25, 2019

Decided: March 27, 2019

APPEARANCES:

Linda Bollinger, Plaintiff self-represented
Gary Dye, Defendant self-represented
Ariel Protack, Defendant self-represented

Alan G Davis, Chief Magistrate
William P Wood, Justice of the Peace
Jennifer Sammons, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

CIVIL ACTION NO: JP17-18-007713

LINDA BOLLINGER VS GARY DYE ET AL

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Plaintiff, Linda Bollinger, filed this action on December 18, 2018 seeking possession and past due rent. Defendants requested a jury trial, but after a pre-trial conference, the parties agreed to move forward with a hearing before a single Justice of the Peace. Judge Blakely heard the original case on January 31, 2019 and rendered judgment on February 11, 2019. Defendants appealed timely and the Court scheduled this matter for trial before a three-judge panel on March 25, 2019. The panel consisted of Chief Magistrate Davis, Judge Wood and Judge Sammons.

This is the panel's decision after trial. For the reasons stated below, the Court finds in favor of the plaintiff on the question of possession and awards a monetary judgment to her as well, reduced by an offset the Court finds defendants are entitled to.

Facts

Defendants rented the home that is subject of this case after inspecting it one time in the dark. The lease provides for monthly rent in the amount of \$1200.00. Defendants were aware that the prior tenants had had a grease fire, and the plaintiff had been unable to properly clean due to the electric being out and therefore being unable to use hot water. Defendants received a \$200.00 credit on the first month's rent for doing the cleaning themselves. The defendants moved in October 1, 2018.

Just over a month in to their tenancy defendants requested that the plaintiff replace the stove since it remained inoperable, even after the cleanup. Plaintiff did so. Defendants claimed they continued to have concerns about the operation of the new stove despite the landlord having it examined by a professional at least twice.

Defendants began making contact with the landlord about a mouse problem. It was not nearly a few mice, but many. Defendant, Gary Dye, testified the grass had been growing around the house prior to them moving in, and he cut it. In addition, the parties agreed mice may have come in due to being surrounded by farm fields and the crops being removed. Plaintiff also claimed that the defendant exacerbated the problem by having a significant amount of materials and trash laying around the outside of the house. No matter the cause, it is clear that there was a mouse infestation in the property. Plaintiff did provide some poison for defendants to use, but in the end it was ineffective. Defendant ended up calling and paying for an exterminator after they alleged plaintiff refused to do so. The exterminator controlled the mouse population.

Defendants began making contact with the plaintiff about a series of issues they wanted to see addressed: replacement of the carpet in two back rooms because, despite using a rug machine, they would not come clean;

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the new stove never quite worked up to their standards; there were holes in the baseboards and behind the stove; and an outlet didn't seem to work. Plaintiff did address some of these issues and some she did not.

In December, defendants quit paying rent. They have paid nothing since then.

Arguments

Plaintiff claims she has given appropriate notice and since the defendants have paid no rent dating back to December, she is entitled to possession and a judgment for back rent. Defendant's claim that they have been deprived the benefit of the bargain because they have been unable to use rooms in the house due to their condition, the lack of a stove, and the mouse infestation.

Discussion

Defendants have shown evidence of significant issues concerning the conditions in the house. While some of those conditions are quite troubling to the Court, the defendants, when faced with these conditions, did not take advantage of the remedies available to them under the landlord tenant code. Instead they simply quit paying rent. The code does not provide that as a remedy for poor conditions in a rental unit.

Because of this, the Court is obligated to award possession to the landlord and a judgment for back rent. The Court has examined all of the issues that the tenants raised regarding the conditions of the property, and determined that a set off can be awarded under 25 Del. Code, Sec. 5307(a)(2) for the mouse infestation they had to deal with. Under 25 Del. Code, Sec. 5307 (a)(2), when the tenant informs the landlord in writing of an issue and the landlord fails to remedy it the tenant can resort to self-help to resolve the issue and reduce the rent by up to \$200.00. The Court finds that the defendants informed the plaintiff of the mouse problem. She made an effort to resolve the issue but it was ineffective and she declined to take further action once informed that the problem persisted. The defendants hired their own exterminator at a cost of \$90 per month. They showed receipts for the months of December and January and testified that the exterminator returned once more in February. The total of those receipts was \$270. The Court awards a set off in that amount as the monthly amount is less than that permitted to be withheld under the Code.

Judgment

For the reasons stated above, the Court awards possession to the landlord and monetary judgment in the amount of \$4570.00 dollars, which accounts for a set off of \$270.00. The Court also awards court costs in the amount of \$45.00, per diem rent in the amount of \$40.00 per day until the landlord obtains possession and post judgment interest at the legal rate of 8.%.

IT IS SO ORDERED 27th day of March, 2019

/s/Alan G Davis
Chief Magistrate
For the Three Judge Panel



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).

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**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

**COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947**

**CIVIL ACTION NO:
JP17-18-007713**

LINDA BOLLINGER, PLAINTIFF

VS

GARY DYE, ARIEL PROTACK, DEFENDANT

Plaintiff Parties:

PLAINTIFF
SYSTEM ID: @3182822
LINDA BOLLINGER
745 HICKMAN RD
GREENWOOD, DE 19950

Defendant Parties:

DEFENDANT
SYSTEM ID: @3182825
GARY DYE
5817 HICKMAN RD
GREENWOOD, DE 19950

DEFENDANT
SYSTEM ID: @3182830
ARIEL PROTACK
5817 HICKMAN RD
GREENWOOD, DE 19950

Other Case Parties:

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**JUSTICE OF THE PEACE COURT
CIVIL POST- JUDGMENT PROCEDURES
THREE JUDGE PANEL**

[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Court civil location. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees or posting bond because they have no money to pay).]

All payments should be made directly to the prevailing party. The Court does not accept payment on judgments.

Pursuant to 10 Del. C. § 9567(b), prevailing parties are reminded of their duty to file a satisfaction of the judgment within 90 days of payment in full.

FAILURE OF A PARTY TO APPEAR FOR THE PANEL TRIAL

As provided by Justice of the Peace Civil Rule 72.1(f), if the Appellant (the party who requested the appeal trial) or both parties fail to appear for the trial, the judgment of the court below shall stand unless the Appellee appears and has filed a counterclaim.

If the Appellee (the party against whom the appeal was taken) fails to appear and a DEFAULT JUDGMENT is entered, that party may file a Motion To Vacate the judgment pursuant to Justice of the Peace Civil Rule 60. The Motion must show; (1) the Appellee's failure to appear was the result of actions of a reasonably prudent person; and (2) the outcome would be different if the trial were held; and (3) the party that appeared would not be prejudiced by having the trial. The Motion must be filed within 10 days, starting the day after the judgment was signed by the De Novo Panel. **A FEE OF \$15.00 MUST ACCOMPANY THIS MOTION.**

MOTION FOR A NEW TRIAL

Either party has 10 days, starting the day after the judgment was signed by a Judge, to file a Motion For A New Trial as provided under Justice of the Peace Court Civil Rule 59. This Motion shall be in writing and shall briefly and succinctly state the reasons for the request. A Motion For A New Trial will be heard by the Panel of Judges who originally heard the case. The reasons for which a new trial may be granted are limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for the Panel to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$15.00 MUST ACCOMPANY THIS MOTION.**